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Testimony of Mary Alice Moore Leonhardt,
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**Senate Bill 1117, An Act Establishing a Demonstration Project For An Office of Administrative Hearings**
Committee on Government Administration and Elections
March 16, 2009

Senator Slossberg, Representative Spallone and members of the Government Administration and Elections Committee, thank you for the opportunity to submit written testimony on Senate Bill 1117, An Act Establishing a Demonstration Project for an Office of Administrative Hearings.

My name is Mary Alice Moore Leonhardt. I am an attorney in private practice in Hartford, where I practice in the area of administrative law and I primarily concentrate on representation of health care clients and transportation providers. A substantial part of my law practice has been devoted to representing, for almost twenty years, these types of clients before state agencies including the Department of Public Health, Office of Health Care Access, Department of Children and Families, Department of Education, Department of Social Services, Department of Transportation, Department of Motor Vehicles and Department of Consumer Protection, in contested cases and appeals of state agency decisions. I have served as the chairperson of the Administrative Law Section of the Connecticut Bar Association (CBA), which consists of attorneys in private practice who represent others before executive agencies, as well as attorneys employed by the State of Connecticut.

The CBA, on behalf of the Administrative Law Section, **supports** this legislation which would bring the state of Connecticut current with the trend followed by the majority of states (including Massachusetts, New Hampshire, New Jersey, Oregon and Maryland, among others) plus the District of Columbia, which have embraced the central hearing panel movement. Passage of this important bill will do so by enabling a demonstration project for establishing an impartial office of administrative hearings in the Executive Department. The mission of this hearings unit would be to provide the public, consumers, regulated individuals and businesses, with an impartial forum in which to secure a fair hearing to dispute and address agency action. On behalf of the CBA, I wish to thank the committee for raising Senate Bill 1117 for a public hearing and I respectfully request that the committee **act favorably** on the bill.

The proposed hearings unit would consolidate into one office the contested cases conducted by the Commission on Human Rights and Opportunities, the Department of Children and Families and the Department of Transportation. Other agencies would have the option to utilize the services of these impartial hearing officers for hearings or mediation, but they would not be mandated to do so.

An office of administrative hearings would: (1) ensure impartial administration and conduct of hearings of contested cases; (2) ensure greater uniformity and consistency in the application of the Uniform Administrative Procedure Act by state agencies; (3) facilitate and enhance public trust and confidence in the exercise of regulatory and disciplinary powers conferred upon agencies and boards; and achieve cost savings for the state.

If Senate Bill 1117 is approved, administrative law adjudicators would hold hearings for the targeted agencies and render proposed or final decisions as provided by law. Those decisions that are currently recommended to an agency head for review and possible modification would continue, as under present law. Appeals of recommended and final decisions would, as under present law, be taken to Superior Court. Under the bill, the office of administrative hearings would be accountable to the Governor through the appointment of the chief administrative law adjudicator, and to the legislature through the budget and confirmation processes. The bill allows for recognition of collective bargaining units in the new agency. Hearing officers transferred to this new agency would retain their rights, class, status and opportunities to avoid any adverse impact.

An office of administrative hearings should be established because it would provide:

- **Impartiality.** Because hearing officers currently are employees of the agencies conducting the hearings, they are not always perceived as impartial, unbiased adjudicators of the issues before them. An agency promulgates regulations and rules of practice, investigates violations, prosecutes cases and decides those very cases. An agency has authority over hearing officers and outside-contracted hearing officers, possibly compromising the integrity and fairness of the hearing process. A centralized panel of administrative law adjudicators sitting in an impartial agency would provide fundamental fairness and due process; apply agency policy and regulations without being subjected to advancement or penalty by the agency for their cooperation or lack of cooperation; and enhance public trust and confidence in the process and in decisions rendered. Consequently, an office of administrative hearings would foster trust and confidence in state government.

- **Efficiency.** A central office of administrative law adjudicators would consolidate support services and systems within one agency, thereby generating efficiencies in time and cost savings. Flexibility in case assignments would predominate to ensure that appropriate administrative adjudicators would be assigned both to specific kinds of cases or particular agencies to apply the necessary expertise, and to meet the "feast or famine" fluctuating caseloads of the various agencies. Staff would easily be assigned where the need exists and cases would be handled in less time. Fewer administrative law adjudicators would be needed to hear more cases.

Attorneys and members of the public would have a central location from which to obtain copies of the administrative law adjudicators' decisions, the procedural regulations established by the office of administrative hearings and the substantive regulations of the departments. It will eliminate a process that currently puts professionals, consumers, businesses and other parties through a prolonged hearing process.

- **Cost and Economies of Scale.** The experience in other states which have pioneered the central hearings units demonstrates that a central independent hearings unit is inherently more cost-effective than independent hearing units sprinkled throughout a multitude of state agencies. This is achieved by economies of scale and flexibility in case assignment. For example, in Oregon, where the office of administrative hearings was established approximately 7 years ago, the savings were measurable:

    - In 2000-01, its first fiscal year after implementation, Oregon's OAH reported the average number of OAH hours per referral was 8.55. By 2002-03, the number had been reduced by a striking 17% to 7.13 hours. Similarly, in 2001-01, the average cost of a referral was $322. In 2002-03, it was $285, a savings of 11%. The total cost savings to Oregon in 2002-03 was $1.4 million.

    - The average cost of Department of Transportation referrals dropped by 6%; the average cost per referral dropped by 9%; and in 2002-03, the Department saved $232,158.

    - The average cost of Department of Human Services referrals (about 3000-4000 annually) dropped by 23% in 2002-03; the average number of hours per referral dropped by 26%; and in 2002-03, the Department saved $371,600.

    Other states have had similar success in driving the costs down:

    - In late 1994, Texas reported a savings of 70% in costs associated with agency hearings. In the second year of its operation of a centralized hearing unit, Maryland's office saved the state almost $828,000. Our near neighbor, New Jersey spent only $7.5 million on its administrative hearings after implementing its central hearings unit, as compared to the $20 million it would have spent on the hearings. Minnesota reported its hearing costs for public utility commission hearings dropped in two years from $400,000 to $234,000.

- **Expertise.** Administrative law adjudicators would be experienced in a uniform administrative law practice and process in accordance with rules of practice which would bring more uniformity to the agency hearing process. All present full-time agency hearing officers of the departments included in the bill would be

transferred into the new hearing office and available for the suitable assignment of cases for their training and expertise. In other words, the same hearing officers would be available to bring their expertise to bear in the same types of cases as were previously assigned to them at their former agency. At the same time, opportunities to hear other types of cases and receive appropriate training, would stimulate and sharpen an administrative law adjudicator's intellect, encourage creative inquiry into novel issues, provide for peer consultation and attract the most qualified people to the administrative bench. The proposed legislation also provides for consistent training of the administrative law adjudicators in procedural and substantive law, ensuring competence and enhanced professionalism, particularly in those agencies that currently use contractual hearing officers.

- **Uniformity and consistency.** The administrative hearing and enforcement processes used by state agencies, except where governed by the UAPA, vary unnecessarily and often for no apparent reason. Uniformity can be achieved by adopting a single process under a central hearing office that can be varied in limited circumstances to address agency needs. A central hearing office could establish uniform hearing procedures.

Members of the committee should know that the Administrative Law Section has been working hard to build consensus on the bill. In the past several years, we have met with, among others, representatives of A & R/AFT, which represents attorney-hearing officers that would be affected by the legislation. As with similar experiences in our neighboring state of Massachusetts and other states such as Oregon and Michigan, the bill provides that the employment rights of employees transferred to the central office would be unaffected. Members of these bargaining units would retain their memberships as they transition over to the new office. We have discussed the bill with representatives of a number of other organizations and representatives from the agencies in the bill and we understand that many of the current hearing officers and their supervisors are supportive of this legislation.

Finally, after carefully reviewing Senate Bill 1117, the Administrative Law Section suggests that changes to section 2 of the bill regarding the appointment of the

Chief Administrative Law Adjudicator would be appropriate. I have attached the section's suggested substitute language to my testimony, and would be happy to discuss these suggestions or answer any questions you may have concerning the proposed substitute language.

The section appreciates your consideration and support of this important legislation that will establish an appropriate "wall of ethics" and ensure integrity in contested case proceedings in Connecticut. On behalf of the CBA and the Administrative Law Section, I respectfully request that the Government Elections & Administration Committee **favorably report** Senate Bill 1117.

Thank you again for the opportunity to comment on Senate Bill 1117. I would be pleased to answer any questions you may have.

Suggested substitute language for Senate Bill 1117
**An Act Establishing a Demonstration Project for an Office of Administrative Hearings**

Sec. 2. (NEW) (*Effective July 1, 2009*) (a) (1) The Governor shall nominate the Chief Administrative Law Adjudicator to serve a term expiring on March 1, 2009. Thereafter, the Governor shall nominate a Chief Administrative Law Adjudicator to serve for a four-year term or until a successor has qualified. To be eligible for nomination, the Chief Administrative Law Adjudicator shall have been admitted to the practice of law in this state for at least ten years and shall be knowledgeable on the subject of administrative law. The Chief Administrative Law Adjudicator shall take the oath of office provided in section 1-25 of the general statutes prior to commencing his or her duties, shall devote full time to the duties of the office of Chief Administrative Law Adjudicator and shall not engage in the private practice of law. The Chief Administrative Law Adjudicator shall be eligible for renomination.

(2) Each nomination made by the Governor to the General Assembly for Chief Administrative Law Adjudicator shall be referred, without debate, to the committee on the judiciary, which shall report thereon within thirty legislative days from the time of reference, but no later than seven legislative days before the adjourning of the General Assembly. Each appointment by the General Assembly of a Chief Administrative Law Adjudicator shall be by concurrent resolution. The action on the passage of each such resolution in the House of Representatives and in the Senate shall be by vote taken on the electrical roll-call device. No resolution shall contain the name of more than one nominee. The Governor shall, within five days after the Governor has notice that any nomination for a Chief Administrative Law Adjudicator made by the Governor has failed to be approved by the affirmative concurrent action of both houses of the General Assembly, make another nomination to such office.

(3) Notwithstanding the provisions of section 4-19 of the general statutes, no vacancy in the position of Chief Administrative Law Adjudicator shall be filled by the Governor when the General Assembly is not in session unless, prior to such filling, the Governor submits the name of the proposed vacancy appointee to the committee on the judiciary. Within forty-five days, the committee on the judiciary may, upon the call of either chairperson, hold a special meeting for the purpose of approving or disapproving such proposed vacancy appointee by majority vote. The Governor shall not administer the oath of office to such proposed vacancy appointee until the committee has approved such proposed vacancy appointee. If the committee determines that it cannot complete its investigation and act on such proposed vacancy appointee within such forty-five-day period, the committee may extend such period by an additional fifteen days. The committee shall notify the Governor in writing of any such extension. Failure of the committee to act on such proposed vacancy appointee within such forty-five-day period or any fifteen-day extension period shall be deemed to be an approval.

(b) The Chief Administrative Law Adjudicator may be removed during his or her term by the Governor for good cause shown.

(c) The Chief Administrative Law Adjudicator shall be exempt from the classified service.

(d) The Chief Administrative Law Adjudicator, administrative law adjudicators, assistants and other employees of the Office of Administrative Hearings shall be entitled to the fringe benefits applicable to other state employees, shall be included under the provisions of chapters 65 and 66 of the general statutes regarding disability and retirement of state employees, and shall receive full retirement credit for each year or portion thereof for which retirement benefits are paid for service as such Chief Administrative Law Adjudicator, administrative law adjudicator, assistant or other employee.